IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

1. D.B. CIVIL SPECIAL APPEAL NO.285/2006

Smt. Satki Devi & Anr.
Vs.
Tikam Singh & ors.

2. D.B. CIVIL SPECIAL APPEAL (W) NO.4602/2006

State of Rajasthan & Anr.
Vs.
Tikam Singh & Ors.

Date of Judgment :: 29th August, 2006

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

: :

Shri Kamal Joshi for appellants in SAW no.285/2006.
Shri N.M. Lodha AAG, for the State-appellant in SAW no.4602/2006..
Shri Sandeep Mehta with
Shri Vineet Jain for respondent no.1.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

REPORTABLE

A short but significant question of law regarding interpretation of sub-rule (5) of rule 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995 is involved

in these two appeals. The appeals arise from the same judgment of the learned Single Judge. They were heard together and are disposed of by this common judgment.

Respondent no.1, Tikam Singh, filed writ petition for quashing the order of the District Magistrate, Pali dated 16.6.2005 appointing Shri Mahesh Bora as advocate to conduct the trial in Sessions Case no.85/2005 arising from FIR no.36/2005 of Jaitaran Police Station, and the order of the Special Judge SC & ST Cases, Pali dated 30.9.2005 rejecting his (Tikam Singh's) application challenging the competence of Shri Mahesh Bora to conduct the trial. The respondent also sought direction to restrain Shri Bora from appearing as Special Public Prosecutor in the case.

Sub-rule (5) of rule 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (in short 'the Rules') empowers the District Magistrate/Sub-Divisional Magistrate to engage advocate to conduct cases in special courts with respect to the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act') on request of the victims of atrocity. It was in exercise of the said power that the District Magistrate, Pali appointed Shri Mahesh Bora to conduct the aforesaid case. By the judgment impugned, the learned Single Judge held that the appointment of Shri Mahesh Bora was not in accordance with law and accordingly quashed the order dated 16.6.2005 but with liberty to the District Magistrate to pass fresh orders on the

application of the complainants. Feeling aggrieved, both complainant and the State have come in appeal.

Case of the respondent, who is an accused alongwith his father, uncle and others in Jaitaran Police Station Case no.36/2005 registered under Sections 302 and 201 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is that Special Public Prosecutors have already been appointed to conduct cases under the Act in the Court of Special Judge, SC & ST Act Cases, Pali under Section 15 of the Act. The complainant however on 7.6.2005 submitted application before the District Magistrate, Pali to appoint Shri Mahesh Bora to plead his case in terms of rule 4(5) of the Rules. The application was accompanied with the consent letter of Shri Mahesh Bora. On 16.6.2005 the District Magistrate appointed Shri Bora as Advocate to conduct the case on remuneration of Rs.5,000/-. According to the respondent, under rule 4(5) of the Rules, the District Magistrate is empowered to appoint an advocate to plead the case of complainant but he has no power to appoint Special Public Prosecutor. The power to appoint Special Public Prosecutor under Section 15 of the Act vests in the State Government which cannot be delegated. The Special Public Prosecutor appointed under Section 15 of the Act alone can conduct the case. The respondent filed application in the Court of Special Judge to which the case had been committed for trial, to restrain Shri Mahesh Bora from acting as Special Public Prosecutor, the application was rejected by the Special Judge on 30.9.2005.

Separate reply has been filed by the State, the complainant and Shri Mahesh Bora controverting the plea of the respondent. They contend that the Act alongwith the Rules framed thereunder is a special law enacted to provide for, among other things, Special Courts for trial of offences against members of the Scheduled Castes and Scheduled Tribes. Sub-rule (5) of rule 4 of the Rules contains special provision overriding the provisions of sub-rule (1) which provides for preparation of panel by the State Government on the recommendation of the District Magistrate. In exercise of the power under sub-rule (5) the District Magistrate/Sub-Divisional Magistrate may, if deemed necessary or if so desired by the victims of atrocity, engage an eminent senior advocate for conducting cases on their behalf, and the impugned appointment of Shri Mahesh Bora made in exercise of the said power and was therefore, in accordance with law. The appointment of senior advocate under rule 4(5) of the Rules is not guided by the general provisions and the impugned appointment could not be called in question, particularly without challenging the vires of the rule. Shri Mahesh Bora, in his reply, further denied certain personal allegations made against him. The learned Single Judge, as indicated above, upheld the contention of the respondent and quashed the appointment of Shri Mahesh Bora.

Before entering upon merit of the case, it would be appropriate to notice the relevant provisions of the Code of Criminal Procedure,1973 (in short 'the Code') and the Act & the Rules

having bearing on the controversy. The preamble of the Act may first of all be noticed as under :-

> "An Act to prevent the Commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."

Some of the relevant definitions under Section 2 of the Act may also be seen as under :-

> "(b) "Code" means the Code of Criminal procedure, 1973 (2 of 1974);
>
> (d) "Special Courts" means a Court of Session specified as a Special Court in section 14;
>
> (e) "Special Public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in section 15"
>
> (f) words and expressions used but not defined in this Act and defined in the Code or the Indian Penal code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal code."

Relevant provisions of the Act are;-

> "**14. Special Court.**- For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.
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> **15. Special Public Prosecutor.-** For every Special Court, the State Government shall, by notification in the Official

Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that court.

20. Act to override other laws.- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

21. Duty of Government to ensure effective implementation of the Act.- (1) Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provisions, such measures may include,-

(i) the provision for adequate facilities,including legal aid, to the persons subjected to atrocities to enable them to avail themselves of justice;

. . . . . .

(iv) the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act;

. . . . . .

23. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act."

In exercise of power under Section 23, the Central Government has framed the SC & ST

Rules, 1995. Reference to rule 4 would be sufficient for purpose of this case. It runs as under :-

> "**4. Supervision of Prosecution and Submission of Report.**- (1) The State Government on the recommendation of the District Magistrate shall prepare for each District a panel of such member of eminent Senior Advocates who have been in practice for not less than seven years, as it may deem necessary for conducting cases in the Special courts. Similarly, in consultation with the Director of Prosecution/in-charge of the prosecution, a panel of such number of Public Prosecutors as it may deem necessary for conducting cases in the Special Court, shall also be specified. Both these panels shall be notified in the Official Gazette of the State and shall remain in force for a period of three years.
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> (2) The District Magistrate and the Director of Prosecution/in-charge of the prosecution shall review at least twice a calendar year, in the months of January and July, the performance of Special Public Prosecutors so specified or appointed and submit a report to the State Government.
>
> (3) If the State Government is satisfied or has reason to believe that a Special Public Prosecutor so appointed or specified has not conducted the case to the best of his ability and with due care and caution, his name may be, for reasons to be recorded in writing, denotified.
>
> (4) The District Magistrate and the officer-in-charge of the prosecution at the District level, shall review the position of cases registered under the Act and submit a monthly report on or before 20th day of each subssequen month to the Director of Prosecution and the State Government. This report shall specify the actions taken/proposed to be taken in respect of investigation and prosecution of each case.

> (5) Notwithstanding anything contained in sub-rule (1) the District Magistrate or the Sub-Divisional Magistrate may, if deem necessary or if so desired by the victims of atrocity engage an eminent Senior Advocate for conducting cases in the Special Court on such payment of fee as he may consider appropriate.
>
> (6) Payment of fee to the Special Public Prosecutor shall be fixed by the State Government on a scale higher than the other panel advocates in the State."

Coming to the Code of Criminal Procedure, the Code has been enacted "to consolidate and amend the law relating to criminal procedure". Section 2 (u) thereof defines 'Public Prosecutor' to mean "any person appointed under Section 24, and includes any person acting under the directions of a Public Prosecutor". Section 24 provides for appointment of Public Prosecutor or Assistant Public Prosecutor by the Central Government or the State Government, as the case may be, for every High Court and every district. Sub-sections (7) and (8) thereof lay down the eligibility for appointment of the Public Prosecutor/Assistant Public Prosecutor and Special Public Prosecutor respectively and they may be quoted as under:

> "(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years.
>
> (8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor."

Section 225 of the Code deals with the conduct of trial by Public Prosecutor and Section 301 deals with appearance of the Public Prosecutors and they may also be quoted as under:-

> "**225. Trial to be conducted by Public Prosecutor.-** In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.
>
> **301. Appearance by Public Prosecutors.-**
>
> (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear or plead without any written authority before any Court in which that case is under inquiry, trial or appeal.
>
> (2) If any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case."

Another provision of the code which may be noticed is Section 4 which deals with trial of offences under the Indian Penal code and other laws. It runs as under :-

> "**4. Trial of offences under the Indian Penal Code and other laws.-** (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
>
> (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force

> regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

The thrust of the case of respondent is that the Code provides for appointment of Public Prosecutor and Special Prosecutor. Under Section 15 of the Act, for every Special Court specified under Section 14, the State Government shall specify a Public Prosecutor – appointed under the Code - or appoint an advocate who has been in practice as an advocate for not less than seven years - as Special Public Prosecutor to conduct cases in that Court. The power to appoint Special Public Prosecutor to conduct cases under the Act thus vests in the State Government, and only a Public Prosecutor appointed under Section 24 of the Code and specified under Section 15 of the Act or an advocate having not less than seven years practice appointed under Section 15 can conduct the case in a Special Court constituted under the Act. The qualification for appointment of an advocate as Special Public Prosecutor under Section 15 of the Act is the same as under Section 24(7) of the Code namely practice as an advocate for not less than seven years. Rule 4 of the Rules deals with supervision of prosecution. Appointment under sub-rule (5) thereof therefore can be made only for supervision of the case. While supervising the case the Advocate so appointed may assist the Court and with its permission submit written arguments after close of evidence, as provided under Section 301(2) of the Code, but he cannot 'conduct' the trial – which power vests only in the Special Public Prosecutor appointed under Section 15 of the Act.

The learned Single Judge accepted almost the entire case of the respondent. The findings of the learned Judge may be summarized as follows.

The Special Court continues to be essentially a Court of Session and trial in such a Court has to be conducted in the manner provided under Chapter XVIII of the Code. The Act does not provide for any particular procedure for trial contrary to the procedure laid down in the Code. The trial of course is by the Special Court, it would nevertheless be a trial before a Court of Session. (The learned Judge placed reliance on Gangula Ashok V. State of Andhra Pradesh, AIR 2000 SC 740 = (2000) 2 SCC 504). In all prosecutions, State is the prosecutor and the prosecution has to be conducted by Public Prosecutor or Special Public Prosecutor. The lawyer appointed by the complainant has no independent right, he has limited right to speak during trial by submitting written arguments under Section 301(2) of the Code and assist the Public Prosecutor with permission of the Court, if the facts so permit.(The learned Judge relied on a decision of this Court in Bhopal Singh & Ors. V. The State of Rajasthan & Ors., 2001 Cr.L.R. (Raj.) 161). The trial before the Special Court is conducted by Special Public Prosecutor but he nevertheless remains a Public Prosecutor subject to responsibilities of the unique office of Public Prosecutor.(The learned Judge referred to Shiv Kumar V. Hukam Chand, 1999 Cr.L.R. (SC) 689 = (1999) 7 SCC 467). The Special Public Prosecutor under Section 15 of the Act is akin to Public Prosecutor under Section 24. The

Special Public Prosecutor under Section 15 of the Act and Public Prosecutor under Section 24 (7) of the Code has same qualification viz. seven years practice as an advocate; while the qualification for Special Public Prosecutor under Section 24 (8) is ten years practice as an advocate. Appointment of Special Public Prosecutor on application of the complainant is not automatic; it can not be made unless public interest so demands and for special reasons. (The learned Judge relied on a decision of this Court in Madho Singh V. State of Raj., 2002(1) Cr.L.R.(Raj.) 498). There is no provision in the Act for appointment of a prosecutor as a 'substitute' for Special Public Prosecutor under Section 15. The Act does not contemplate appointment of "Extra Special Public Prosecutor" or "Special Special Public Prosecutor" for conducting trial before the Special Court. Any appointment of Special Public Prosecutor can be made only with reference to Section 24(8) of the Code applying the principles laid down in Madho Singh case (supra), that is, only when public interest so demands and not automatically on the application of complainant.

Dwelling upon the scope of rule 4(5) of the Rules the learned Single Judge held that the rule does not relate to Section 15. It operates to achieve the objectives of various clauses of Section 21(2) of the Act in the matter of effective implementation of the Act. Under rule 4 (5), an eminent senior advocate can be 'engaged' by the District Magistrate or Sub-Divisional magistrate, such 'engaged' lawyer can only aid or assist the Special Public Prosecutor "but in any case, he cannot prosecute". If sub-rule (5) is

read as proviso to Section 15 of the Act, it would disturb the structure of the Act. If the rule goes beyond what the Act contemplates, it must yield to the Act. Vires of sub-rule (5) need not be challenged as it is relatable to Section 21 of the Act. A non-obstante clause can operate only to the extent it is intended to be, and from a bare reference to sub-rule (5) it is clear that rule intends to facilitate engagement of a counsel if considered necessary by the District Magistrate or Sub-Divisional Magistrate or desired by the complainant alongside the Special Public Prosecutor. Such engagement is not intended to be (over and above) the power of the State Government to specify or appoint Special Public Prosecutor under Section 15 of the Act. If the non-obstante clause in sub-rule (5) is read as an independent provision over and above the enactment, the rule to that extent would be invalid and inoperative. The prosecution being essentially by the State and prosecutor being appointed by the State, an Executive Magistrate cannot have an independent power to appoint a prosecutor. Sub-rule (5) does not refer to minimum length of practice as an advocate unlike Section 15 of the Act or Section 24 of the Code for appointment as a Special Public Prosecutor. The omission regarding minimum length of service and the use of the term “engagement” in place of appointment cannot be ignored as insignificant. If the advocate appointed under sub-rule (5) on the application of the victim is treated as prosecutor, it would lead to an anomalous position as it would permit the victim to become prosecutor. Advocate so appointed can conduct the case “to the extent his engagement would permit; but he cannot prosecute”.

Shri Sandeep Mehta and Shri Vineet Jain appearing for the respondent reiterated the submissions and cited decisions noticed and upheld by the learned Single Judge as seen above, and it is not necessary to refer to them once again in this judgment. We may straightaway proceed to examine them.

We are afraid, the learned Single Judge overlooked the fact that the Act is a special statute enacted among other things to provide for Special Courts for trial of offences of atrocities against members of the Scheduled Castes and Scheduled Tribes. It is true that in terms of Section 4(2) of the Code, all offences under any law other than the Indian Penal Code including special law are to be investigated, inquired into, tried and otherwise dealt with according to the same provisions i.e. provisions contained in the Code, but that is subject to any special enactment for the time being in force regulating the manner of investigation, enquiry or trial. The provisions regarding appointment of Public Prosecutor are contained in Section 24 of the Code and those relating to trial by Public Prosecutor in a Court of Session are contained in Sections 225 and 301 of the Code. The provisions relating to appointment of Special Public Prosecutor under Section 15 or engagement of an 'eminent senior advocate' under rule 4(5) are to be read as supplemental to the provisions of the Code. It is pertinent to mention here that appointment of Public Prosecutor or Special Public Prosecutor – whether under Section 24 of the Code or Section 15 of the Act – is for "conducting" cases in the

Court of Session or Special Court, as the case may be. Likewise, the engagement of eminent senior advocate under rule 4(5) of the Rules is also for "conducting" cases in the Special Court. We find no justification for taking the view that an advocate engaged under rule 4(5) can only aid or assist Special Public Prosecutor and submit written arguments at the end of trial with permission of the Court, but he cannot prosecute.

On a conjoint reading of Section 15 of the Act and sub-rules (1) and (5) of rule 4 of the Rules, it would appear that under Section 15, the State Government may specify the Public Prosecutor or make a fresh appointment of an advocate who has been practising as an advocate for not less than seven years as Special Public Prosecutor. Under sub-rule (1) of rule 4, the State Government is required to prepare, on the recommendation of the District Magistrate, a panel of eminent senior advocates who have put in practice for not less than seven years. Another panel of public prosecutors specified in consultation with the Director of Prosecution/in-charge of prosecution is also required to be prepared. These panels shall remain in force for a period of three years.

Before proceeding further, we may further analyse rule 4(1). On a close reading, it would appear that while the first part contemplates empanelment of 'advocates' having not less than seven years practice, the second part refers to panel of 'public prosecutors'. Section 15, it is to be kept in mind, also refers to 'specifying' a Public Prosecutor and 'appointing' an advocate. The only difference is that while rule 4(1)

provides for 'empanelment', Section 15 provides for specifying the particular Public Prosecutor or appointing a particular advocate (apparently from the panel prepared under rule 4(1)) for the particular Special Court.

Sub-rule (5) contains a non-obstante clause overriding the provisions of sub-rule (1). Thereunder, the District Magistrate or Sub-Divisional Magistrate may on application of the victim of atrocity or on his own motion, if deemed necessary, engage an eminent senior advocate to conduct the case. While the panels contemplated in sub-rule (1) of rule 4 are standing panels and the advocates/public prosecutors borne on these panels have a tenure of three years subject to review of their performance and ability – as provided in sub-rules (2), (3) and (4) of rule 4, and they may appear in the case assigned to them. The engagement under sub-rule (5) of rule 4 is special appointment for a particular case. This is evident from the fact that such appointment is on payment of special fee as considered appropriate, which may be different from the fee payable to an advocate/public prosecutor appointed or specified under Section 15 of the Act.

Much emphasis was laid on the use of a different terminology viz "engage" in rule 4(5) as distinct from "appoint" or "specify" in Section 15. It was submitted that the trial can be conducted only by a Special Public Prosecutor as provided in Section 15 of the Act. Sub-rule (5) does not refer to conducting trial by a Special Public Prosecutor. Conducting case by an 'eminent senior advocate' as provided in sub-rule (5)

therefore, would not tantamount to conducting case by a Special Public Prosecutor.

It is true that sub-rule (5) employs a different term viz "engage" different from "appoint" or "specify" used in Section 15. But we do not think, the phraseology has any bearing on the extent of one's brief. Whether he is appointed, specified or engaged – he would nonetheless be "conducting" the case in Special Court. We are conscious of the fact that in the scheme of things provided in the Code, the trial in a Court of Session is conducted only by a Public Prosecutor or Special Public Prosecutor; Section 15 of the Act also provides for conducting cases in Special Court by a Special Public Prosecutor. No mention, on the other hand is made of Special Public Prosecutor in sub-rule (5). The reason however, is not far to seek. Section 15 contemplates 'specifying' a Public Prosecutor – whether appointed under Section 24 of the Code or empanelled under sub-rule (1) of rule 4 - or 'appointing' an advocate as Special Public Prosecutor for the purpose of conducting cases in the Special Court. These appointments apparently are made from panels of prosecutors and advocates. It may so happen that the victim of atrocity in a particular case may not have faith in the prosecutor/advocate specified or appointed under Section 15. He may like to have the case conducted by an advocate of his choice. It is in order to inspire confidence of the victim of atrocity in the administration of justice that a special provision has been made for engagement of an eminent senior advocate to conduct the case. That is why a different term 'engaged' has been used in

rule 4(5) in contradistinction to 'appoint' or 'specify' in Section 15. 'Engaged' means that he has been engaged for a particular case, unlike appointment/specifying of an advocate/prosecutor from the panel. It is to be kept in mind that sub-rule (5) contains a non-obstante clause overriding the provisions of sub-rule (1) which means that the appointment under rule 4(5) can be made of a person who is not in the panel. The panels, as seen above, comprise of advocates/public prosecutors of the choice of the government. It is also to be kept in mind that the Act is a special statute enacted to provide relief to the victims of atrocity in the matter of trial of offences covered by the Act and rule 4(5) confers a right upon the victim of atrocity to have his case conducted by an advocate of his choice – so as to ensure that he has faith in the trial.

In State of M.P. V. Ram Kishna Balothia, (1995) 3 SCC 221 – though in a different context while considering the validity of Section 18 of the Act which excludes the application of provisions regarding anticipatory bail under Section 438 Cr.P.C. - the Supreme Court observed as under :-

> "9. . . . . looking to the historical background relating to the practice of "Untouchability" and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences. There is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. . . . . .

> 10. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society, and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code."

It may be mentioned that Section 20 of the Act also contains a non-obstante clause to override "any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law".

The case of Gangula Ashok V. State of Andhra Pradesh (supra) involved a different point altogether. A question had arisen as to whether charge-sheet could straightaway be filed in the Special Court, and whether the Special Court had jurisdiction to take cognizance of any offence without the case having been committed to that court. The Supreme Court held that the Special Court is a Court of Session and Section 193 of the Code would stand in its way in taking cognizance directly without the case being committed. In that connection, the Supreme Court observed as under :-

> "Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude of its character or even powers as a Court of Session. The trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains

> a fasciculus of provisions for "Trial before a Court of Session."

It would appear that the observations were made in a different context and have no relevance in the instant case.

Reliance on Shiv Kumar V. Hukam Chand & Anr. (supra) also does not seem to be appropriate. The observations regarding role of Public Prosecutor relied upon by the learned counsel were made in the context of ordinary criminal trial and have no relevance in trial under a special statute. In any case, it would be premature to make any comment about lack of fairness on which emphasis was laid by the Supreme Court. At this stage we are simply concerned with the validity of appointment of Shri Mahesh Bora within the framework of rule 4(5) of the Rules and it is not our intention to go into his bona fides or fairness or lack of it. Indeed, as indicated above, if rule 4(5) provides for appointment of an advocate of the choice of victim of atrocity so as to instil sense of confidence and faith in the trial, in absence of any material to the contrary, it is doubtful if the appointment can be challenged on that ground. As a matter of fact, it is doubtful, to what extent, if at all, an accused can challenge the appointment of a prosecutor. Challenging conduct of a prosecutor is one thing, challenging his appointment is another thing.

The State no doubt is the prosecutor and the prosecution in all cases and trial in all cases is to be conducted in the Court of Session by Public Prosecutor or Special Public Prosecutor,

as the case may be, appointed by the Government but the SC & ST Act is a special statute which overrides any other law for the time being in force.

We do not find any conflict between sub-rule (5) of rule 4 and Section 15 of the Act. As indicated above, whether a Public Prosecutor is specified or an advocate is appointed under Section 15 of the Act or an eminent senior advocate is engaged under rule 4(5), these appointments or engagements are for the purpose of conducting cases in Special Courts. The observation of the learned Single Judge that sub-rule (5) of rule 4 is limited to implementing the Act framed in the context of Section 21 (2)(iv) does not appear to be correct. We are conscious of the fact that sub-rule (5) is part of the rule captioned as 'supervision of prosecution and submission of report' – referred to in clause (iv) of sub-section (2) of Section 21. However on a combined reading of the rule, it is manifest that while sub-rules (1) to (4) contain provisions regarding supervision of prosecutions through panel prepared under sub-rule (1) and review of the performance of the prosecutors borne on the panel, sub-rule (5) is an independent provision with a non-obstante clause. Rules are always framed for effective implementation of the Act, but if sub-rule (5) is given a restricted meaning and it is held that the authority of the advocate engaged by the District Magistrate to conduct case is limited to assisting the Public Prosecutor as a second fiddle, it would frustrate the object of sub-rule (5) as it would deny the victim of

atrocity the facility to have his case conducted by an advocate of his choice.

It is true that sub-rule (5) does not lay down any qualification as to the minimum length of practice unlike Section 15 or sub-rule (1) of rule 4 but, apparently, framers of the rule did not want to put any restriction on the choice of the victims of atrocity subject to the embargo that the person should be an 'eminent senior advocate' – a term used in sub-rule (1) of rule 4 as well. Thus the advocate should be of the choice of victim of atrocity and also in the opinion of the District Magistrate/Sub-Divisional Magistrate, an eminent senior advocate.

The golden rule of interpretation of statute is that the provision is to be given literal interpretation unless such interpretation leads to some absurdity. Sub-rule (5) of rule 4 in no uncertain terms provides for engagement/appointment of an eminent senior advocate for conducting trial in a Special Court. We find no ambiguity or conflict with Section 15 in the provision, and without challenging the vires thereof, the respondent cannot challenge the appointment of Shri Mahesh Bora for conducting the trial.

For the reasons stated above, we are unable to sustain the findings of the learned Single Judge.

In the result, these appeals are allowed; the order of the learned Single Judge dated

08.05.2006 is set aside and the writ petition is dismissed.

[MOHAMMAD RAFIQ], J. **[S.N. JHA], CJ.**

Skant/-